No. 99-722

In The
Supreme Court of the United States
October Term, 1999

CASINO VENTURES, INC.,

Petitioner,

vs.

ROBERT M. STEWART, SR., in his official capacity as Chief of the State Law Enforcement Division; and CHARLES M. CONDON, in his official capacity as Attorney General for the State of South Carolina,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Fourth Circuit

Respondent's Brief In Opposition

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QUESTIONS PRESENTED

I. WHETHER THE FOURTH CIRCUIT CORRECTLY DETERMINED, CONSISTENT WITH THIS COURT'S RELEVANT DECISIONS, THAT THE 1992 AMENDMENTS TO THE JOHNSON ACT DO NOT PREEMPT LONG STANDING STATE CRIMINAL STATUTES GENERALLY PROHIBITING THE POSSESSION AND USE OF CERTAIN GAMBLING DEVICES.

II. WHETHER THIS CASE PRESENTS ANY COMPELLING REASON TO GRANT A PETITION FOR WRIT OF CERTIORARI.

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COUNTER STATEMENT OF THE CASE

In 1951, Congress enacted the Johnson Act, 15 U.S.C. §§ 1171 - 1178 (subsequently amended in 1962, 1992, and 1996), prohibiting the transportation of various gambling devices, including slot machines, in interstate and foreign commerce. Congress' principal intent in passing this law was to assist state and local law enforcement officers in the enforcement of state and local antigambling statutes. 1950 U.S. Code Cong. Serv. (Vol 2) pp. 4240 - 50. Originally, this federal legislation imposed two prohibitions that served as an absolute bar to gaming aboard U.S. registered cruise ships. The Johnson Act forbade (1) the transportation of gaming devices into any state [15 U.S.C. § 1172]; and (2) possession or use within the "special maritime and territorial jurisdiction of the United States" or from any place outside the jurisdiction of a specific state [15 U.S.C. § 1175].

Before March 9, 1992, only three exceptions to this prohibition existed. The Johnson Act did not apply if the state where the device was being sent had enacted a specific exemption to the Johnson Act. Second, the law did not apply to gambling devices designated for use at, and transported to, a legal and licensed gaming establishment. Thirdly, pursuant to a 1962 amendment, it did not apply if the state where the devices were being transported had a law already in existence making the devices legal. 15 U.S.C. § 1172. Hence, prior to 1992, gaming could only be conducted aboard U.S.-flag vessels operating exclusively within the jurisdiction of a state that had specifically legalized the use and possession of gambling on such vessels.[1]

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[1] In 1948, two years prior to the passage of the Johnson Act, Congress passed the Gambling Ship Act, 18 U.S.C. §§ 1081 - 1083, making unlawful the operation of gambling ships (vessel used "principally for the operation of one or more gambling establishments") in U.S. maritime jurisdiction, and making unlawful the operation of U.S.-flag vessels as gambling ships. Although this law

In 1992, Congress amended the Johnson Act solely for the purpose of making U.S.-flag passenger cruise vessels competitive and on par with foreign-flag vessels which had been able to offer various forms of gambling as an amenity to their passengers. The 1992 amendments lifted the federal restrictions on the transportation and use of gambling devices on U.S. flag cruise or "dinner" vessels if the use of the gaming devices occurred only after the vessel had traveled outside the state territorial sea and if the gaming devices remained on board while the ship was within

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was viewed as applying to both U.S.- and foreign-flag vessels if an American citizen owned, operated or had an interest in the vessel, it did not constitute an absolute ban on gambling on vessels since many traditional cruise ships which offered passenger berthing did not meet the Justice Department's definition of a "gambling ship". The Johnson Act, however, which did not apply to foreign-flag vessels, precluded gambling on a U.S.-flag vessel, even if the principal use of the vessel was other than the operation of a gambling establishment. Pet. App. 39-40 (H.R. Report No. 102-357, 102nd Cong., 1st Sess., November 22, 1991).

the state three-mile limit.[2] Pet. App. 34. (H.R. Report No. 102-357).

Unlike traditional cruises, day cruises or "cruises to nowhere" are voyages that usually last for a few hours and begin and end in the same port without any intervening stop. One vessel will make several "cruises" or voyages during any twenty-four hour period. The principal purpose of these day cruises is the provision of a venue for casino style gambling once the vessel sails beyond the state's three mile territorial waters.

South Carolina has long standing state statutes which prohibit the possession and use of certain gambling devices

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[2] It is clear from reading the House report, and the subsequent debate, that Congress never intended through these 1992 Johnson Act amendments to encourage the growth of the "day cruise" industry, the sole purpose of which is to operate floating casino gambling establishments. The sponsors of the 1992 Johnson Act amendments believed that the federal Gambling Ship Act would continue to prohibit "gambling ships" or day cruises. The 1992 amendments sole "raison d'etre" was to encourage investment in the traditional U.S.-flag cruise ship industry consisting of vessels with passenger berthing which offered gambling activities only as an "amenity". Pet. App. 41-43, (H.R. Report No. 102-357); Res. App. 1-7, (137 Cong. Rec. H11021-04) (1991). What could not be foreseen in 1992 was that the Gambling Ship Act would be subsequently eviscerated by an abstruse amendment (buried in the "Violent Crime Control and Law Enforcement Act of 1994"), passed without fanfare, that basically removed the long-standing federal prohibition against the "gambling ship". 1994 U.S. Code Cong. and Adm. News, p. 1873 (Pub. L. 103-322, Title XXXII, Subtitle E), *discussed in United States v. One Big Six Wheel*, 987 F.Supp. 169, 171 (E.D.N.Y. 1997). The control of the gambling activities on day cruise vessels thus became a matter left entirely to the states.

everywhere within South Carolina's territory.[3] The Petitioner, a corporation which owns and operates a "day cruise" business in Florida, brought suit against the South Carolina Attorney General and the South Carolina Law Enforcement Division (SLED) alleging that the 1992 Johnson Act amendments preempted existing state criminal laws prohibiting the possession and use of gambling devices and created a federal "right" to possess casino gambling equipment within South Carolina's territory for use on plaintiff's day cruise vessels. The district court accepted plaintiff's contention, issuing a declaratory judgment authorizing plaintiff to possess gambling devices such as slot machines, otherwise illegal under state law, and operate its day cruises from ports within South Carolina. *Casino Ventures v. Stewart*, 23 F.Supp.2d 647 (D.S.C. 1998).

The Fourth Circuit reversed the district court and rejected the argument that the 1992 amendments to the Johnson Act created some federal "right" to operate gambling cruises within South Carolina's territorial waters. *Casino Ventures v. Stewart*, 183 F.3d 307 (4th Cir. 1999). Instead, the Fourth Circuit held that the Johnson Act "does not preempt state regulatory authority over gambling" and that "South Carolina authorities remain free

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[3] S.C. Code Ann. §§ 12-21-2710 (West Supp. 1998) (prohibiting the operation of slot machines or other devices pertaining to games of chance of whatever name or kind within the state); 12-21-2712 (West Supp. 1998) (providing for the seizure and destruction of unlawful vending or slot machines, punch boards, or other devices pertaining to games of chance); 16-19-40 (Law. Co-op. 1976) (unlawful games and betting in a gaming house); 16-19-50 (Law. Co-op. 1976) (keeping unlawful gaming tables); 16-19-120 (Law. Co-op. 1976) (destruction of gambling or gaming devices of any kind); and 16-19-130 (Law. Co-op. 1976) (prohibiting betting, pool selling, bookmaking and the like, including the recording or registering of bets or wagers within any "room, shed, tenement, booth, building, float or vessel, or any part thereof"). Pet. App. 29-33.

to enforce state criminal prohibitions against illicit gambling cruise activity." *Id.* at 308. Indeed, the original, core purpose of the Johnson Act was and is to buttress existing state law prohibiting gambling, not preempt or supercede it. *Id.* at 311.

In this regard, Petitioner misstates the effect of the 1992 amendments to the Johnson Act (P.L. 102-251). These amendments to 15 U.S.C. § 1175 did not "authorize" vessels to transport or possess gambling devices while in a State's territorial waters. Pet. for Writ of Cert. 6.

Evident by its own terms, 15 U.S.C. § 1175 has never been applied by Congress to a state's territorial waters. The 1992 amendments adding § 1175(b) lifted the *federal* prohibitions against the possession, transportation and use of gambling equipment on vessels on multi-state or international voyages operating in waters *outside* the control of any state.[4] These 1992 amendments were never intended to have any impact on existing state criminal laws which make illegal the possession of gambling devices everywhere within a state. The reach of the state criminal laws has always extended to vessels operating within the state's territorial waters, particularly those vessels that have a close nexus to the state, departing from and returning to the same state port on a continuous basis.[5] As noted by the Fourth Circuit:

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[4] Section 1175(b)(1)(B) generally lifts previous federal prohibitions against gambling on multi-state or international cruise vessels on voyages beyond a state's territory provided that the gambling devices on such vessels are not used while the vessel operates within the state's jurisdiction and are not removed at any time from the vessel. There is no language in this section purporting to preempt any existing state gambling laws.

[5] Prior to the October, 1998 ruling by the federal district court, no gambling ship enterprise operated day cruises out of any South Carolina port for the very reason that exists today. South

> By its terms, section 1175 applies only to vessels "within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18." 15 U.S.C. § 1175(a). The special maritime jurisdiction of the United States specifically excludes waters subject to the control of state authorities. 18 U.S.C. § 7(1) (special maritime jurisdiction includes the high seas and "any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State "(emphasis added)); see also *United States v. Tanner*, 471 F.2d 128, 141 (7th Cir.1972) (noting that under 18 U.S.C. § 7(1) "there can be no concurrent federal and state jurisdiction"); 2 Benedict on Admiralty § 112(a)[1] (7th rev. ed.1998).

Id. at 311.

Underscoring this is the fact that § 1175(b)(2)(A) was inserted by Congress to allow each state to determine whether the general federal gambling prohibitions are to remain applicable with respect to "cruises to nowhere." As stated by the Fourth Circuit:

> Additionally, by enacting section 1175 Congress extended the reach of state police power beyond state territorial waters: that provision permits states to change the content of federal law with respect to cruises to nowhere. Although the 1992 amendments to the Johnson Act generally permit the use of gambling devices on the high seas, they

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Carolina law has long prohibited the possession and use of gambling equipment such as that contained on the Petitioner's vessel.

> permit states to reverse course and opt to have cruising to nowhere remain a federal crime. 15 U.S.C. § 1175(a)-(b). Cruises to nowhere remain a federal crime if a state "has enacted a statute the terms of which prohibit" the use of gambling devices on such cruises. Id. § 1175(b)(2)(A).

Id. at 311.

Contrary to Petitioner's assertion, the fact that a state has not specifically banned the possession of gambling devices on vessels conducting day cruises does not mean that, after 1992, the State's gambling laws are a nullity and cannot be enforced against these cruises in state waters generally. Pet. for Writ of Cert. 6. South Carolina has not enacted any law specifically prohibiting the transportation or possession of gambling devices on vessels conducting cruises to nowhere because there has been no need to do so and there is no federal mandate that it must.[6] As determined by the Fourth Circuit:

> The lifting of federal restrictions on gambling outside state territorial waters does not preempt state gambling prohibitions within those waters. States remain free to regulate gambling within their territorial waters.

Id. at 313.

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[6] Because of its determination that there was no preemption of state law, the Fourth Circuit specifically stated that it was not deciding at this juncture whether a state had to enact a specific law against day cruise operations after 1992 in order to make it a *federal* crime to operate a gambling boat. *Id.* at 309, n. 1 That is a question that would be reached in a federal prosecution brought against a day cruise operator under § 1175 of the Johnson Act. .

REASONS FOR DENYING THE WRIT

I

THE FOURTH CIRCUIT COURT OF APPEALS CORRECTLY DETERMINED, CONSISTENT WITH THIS COURT'S RELEVANT DECISIONS, THAT THE 1992 AMENDMENTS TO THE JOHNSON ACT DO NOT PREEMPT LONG STANDING STATE CRIMINAL STATUTES GENERALLY PROHIBITING THE POSSESSION AND USE OF CERTAIN GAMBLING DEVICES.

Petitioner's argument that the Fourth Circuit Opinion either ignored Congressional intent in construing the 1992 Johnson Act amendments, or "overstated the deference to be accorded state law" is fallacious. As the Fourth Circuit correctly recognized, the preemption analysis necessarily focuses on the statutory text, as may be illumined by Congressional "purpose", and includes a "basic assumption that Congress did not intend to displace state law." *Casino Ventures*, 183 F.3d at 310, quoting *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981).

Petitioner disregards the accepted proposition that the regulation of gambling is the traditional province of the states. As this Court has recognized, a state possesses a substantial interest in the health, safety and welfare of its citizens in prohibiting casino gambling. *Posadas De Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 106 S.Ct. 2968, 92 L.Ed.2d 266 (1986). This Court has also stressed that where regulation is in an area which states have traditionally occupied, the Court must start with the assumption that the historic police powers of the state are not to be superseded by Congressional act "unless that was the clear and manifest purpose of Congress." *New York State Conference of Blue Cross & Blue Shield Plans v.*

Travelers Ins. Co., 514 U.S. 645, 654, 115 S.Ct. 1671, 1676, 131 L.Ed.2d 695 (1995); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 1309, 51 L.Ed.2d 604 (1977); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed.1447 (1947).

Petitioner argues on one hand that the Fourth Circuit failed to properly conduct an "express preemption" analysis, citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996), while, at the same time, argues that the "implied preemption" scrutiny undertaken by the Court was flawed, citing *Perez v. Campbell*, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233, (1971) and *Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct.399, 85 L.Ed. 581 (1941). But Petitioner never argued to the Fourth Circuit that there was any "express preemption" of state law, precisely because there is none.

> Neither party contends that Congress has expressly preempted the state laws at issue here. Instead, Casino Ventures argues that state laws banning the use and possession of gambling devices on vessels have been impliedly preempted by federal law.

Casino Ventures, 183 F.3d at 310.

The Fourth Circuit properly stated the "implied preemption" rule of law as set forth by this Court and engaged in the correct analysis, examining the text of the federal law, aided not only by the legislative history of the 1992 Johnson Act amendments , and the context in which these were enacted, but also the Act as a whole, as well as the Congressional purpose. *Wisconsin Public Intervenor v. Mortier* 501 U.S. 597, 607, 111 S.Ct. 2476, 2483, 115 L.Ed.2d 532 (1991); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed.1447 (1947).

> "The purpose of Congress is the ultimate touch stone" in a preemption case. *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963). That being so, state law is preempted "if federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992) (internal quotation marks omitted). Additionally, courts imply preemption if state law "actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248, 104 S.Ct. 615, 78 L.Ed.2d 443 (1984) (citation omitted); see also *Worm*, 970 F.2d at 1304.

Casino Ventures, 183 F.3d at 310.

Petitioner selectively focuses on certain portions of the legislative history behind the 1992 amendments to the Johnson Act and charges that the Fourth Circuit failed to consider these aspects. But nothing in the Petition for Writ of Certiorari erodes the propriety of the result reached by the Fourth Circuit.

A. *The Fourth Circuit Correctly Determined That There Is No Field Preemption.*

In the first instance, the Fourth Circuit found no field preemption. As the Fourth Circuit pointed out, neither maritime matters nor the regulation of gambling are matters subject to exclusive federal control. *Id.*, *quoting Romero v. International Terminal Operating Co.*, 358 U.S. 354, 374, 79 S.Ct. 468, 3

L.Ed.2d 368 (1959). In regard to both, the State and Federal governments historically have asserted joint regulatory powers.

In regard to the regulation of gambling, the Johnson Act, codified at 15 U.S.C. §§ 1171, *et seq.*, is a clear example of this. The Johnson Act declared it unlawful under federal law to "knowingly . . . transport any gambling device to any place in a State . . . from any place outside of such State . . . ." That clear federal prohibition was deemed not applicable only if a particular State or subdivision thereof "has enacted a law providing for the exception" of such State or subdivision, or where "betting is legal under applicable State laws . . ." or in any State "in which the transported gambling device is specifically enumerated as lawful in a statute of that State." 15 U.S.C. § 1172.

By requiring a state affirmatively to make gambling legal in order to constitute an exception to the original Johnson Act prohibitions, Congress made its position unambiguous with respect to federal policy toward gambling. As expressed by the House Committee on Interstate and Foreign Commerce, in its favorable report on the Bill in 1950, "[t]he primary purpose of this legislation is to support the policy of those States which outlaw slot machines and similar gambling devices, by prohibiting use of the channels of interstate or foreign commerce for the shipment of such machines or devices into such States." 1950 U.S. Code Cong. Serv. (Vol. 2), p. 4240. Simply put, the Johnson Act was intended to provide backup and reinforcement to state law prohibitions against gambling.

This was underscored by the provisions of § 1175 of Title 15, by which Congress made it "unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device . . . within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18." Under this provision, Congress made it illegal to possess or use a gambling device anywhere within the special maritime

jurisdiction of the United States which was otherwise outside of any specific state jurisdiction. 18 U.S.C. § 7(1).

It is against this backdrop that Congress amended the Johnson Act. As pointed out, the need for Congressional action concerning the Johnson Act in 1992 was brought about by an anomaly which federal law was deemed to impose, creating disparate treatment between U.S.-flag cruise vessels and foreign-flag ships . Pet. App. 36-37 (House Report No. 102-357, *supra.*). Thus, the Johnson Act amendments were aimed at rectifying this disparity between U.S.- and foreign-flagged vessels by removing federal gambling prohibitions against the gambling activities of traditional cruise ships operating beyond state territory, typically on interstate or international voyages, thereby encouraging investment in the U.S. flag cruise ship industry.

Although the 1992 Johnson Act amendments were driven by a policy different than that of suppressing organized gambling which undergirded the original Johnson Act, there is nothing in the express language of the amended Act, or in the legislative history, that demonstrates congressional intent to radically alter course and preempt state anti-gambling laws. As the Fourth Circuit correctly noted, just the opposite was true, particularly in regard to gambling vessels, such as that operated by the Petitioner.

Properly read, the 1992 amendments to § 1175 do not render state gambling laws impotent or nugatory. Nothing pointed to by Petitioner supports a reasonable inference that Congress in 1992 decided to occupy the field of maritime gambling to the exclusion of the States. The Fourth's Circuit's analysis is entirely correct:

> Section 1175--which expressly withdraws federal regulation from state territorial waters and permits states to determine the content of federal

> law outside of those waters--recognizes the vital state regulatory interests in gambling controls. From this we cannot conclude that maritime gambling is a field "in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985) (internal quotation marks omitted). The criminal regulation of gambling, even gambling taking place within the admiralty and maritime jurisdiction of the United States, is simply not a field over which Congress has sought exclusive regulatory authority and the displacement of state law.

Id. at 311-12.

B. *The Fourth Circuit Correctly Determined That South Carolina's Longstanding Anti-Gambling Laws Do Not Conflict With The 1992 Amendments To The Johnson Act.*

Secondly, the Fourth Circuit correctly determined that South Carolina's laws do not conflict with the 1992 amendments to the Johnson Act. Although Petitioner attempts to rest its case on one provision, § 1175(b)(2)(A), the plain language, structure, and purpose of § 1175 read in its entirety "is completely at odds with preemption." *Id.* at 312. There is nothing in the language of the law that provides any clear and manifest indication that Congress has chosen to supplant state regulation of maritime gambling in the state's own territory. [7] *Puerto Rico Department*

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[7] This Court has recognized that a state may govern the conduct of its citizens even upon the high seas with respect to matters

of Consumer Affairs v. Isla Petroleum Corp., 485 U.S. 495, 501, 108 S.Ct. 1350, 1354, 99 L.Ed.2d 582 (1988). In fact, as pointed out by the Fourth Circuit, § 1175 fairly read augments state authority and respects dominant state interests in this area.

This is underscored by the fact that Congress found it necessary in 1996 to add § 1175(c) expressly preempting existing Alaska state law. Alaska state law, like that of South Carolina, generally prohibits gambling everywhere within the state's territory, including the possession and use of gambling equipment on vessels operating within state waters. Alaska Stat. §§ 11.66.200. - .280.

Petitioner attempts to argue that the express preemption contained in § 1175(c) was included by Congress to withhold from Alaska the "limited delegation" to enact a law specifically prohibiting the use of gambling devices on voyages to nowhere.[8] But that argument is completely at odds with both the timing and purpose underlying these amendments.

First, these Alaska anti-gambling statutes existed prior to 1992. Secondly, Alaska did not enact a new law after 1992 specifically prohibiting shipboard gambling. Finally, Congress did not preempt Alaska law until 1996. If Petitioner's argument

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in which the state has a legitimate interest and where there is no conflict with acts of Congress. *Skiriotes v Florida*, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941).

[8] The "limited delegation" referred to the Congressional Record [Pet. App. 54] relates to the authority granted by Congress under § 1175(b)(2)(A) to allow states to enact legislation "to adjust the contours of federal law" by criminalizing gambling cruises to nowhere outside a state's territory. *Casino Ventures*, 183 F.3d at 312. Congress did not propose to preempt existing state law as argued by Petitioner.

were correct, there would be no need for Congress to expressly preempt Alaska law in 1996 if states were already preempted by the 1992 amendments from interfering in any way with marine gambling. As pointed out by the Fourth Circuit, "[t]he Alaska exception only makes sense if states are not generally preempted from barring the possession and transportation of gambling devices within their territorial waters."[9] *Casino Ventures*, 183 F.3d at 312.

C. *The Fourth Circuit Correctly Determined That State Law Does Not Stand As An Obstacle To The Accomplishment Of Congressional Purpose.*

Thirdly, in regard to implied preemption analysis, the Fourth Circuit appropriately determined that "allowing states to make their own regulatory choices about gambling does not interfere with the purpose of the 1992 amendments." *Id.* There is no indication in the provisions of the 1992 amendments or in

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[9] The reason for this 1996 Alaska preemption provision arose because of a controversy that erupted in that state in 1993 when it was pointed out that major foreign flag cruise ships on interstate or international voyages were conducting on-board gambling while sailing along the Alaska coastline. Alaska state officials properly concluded that Alaska statutes relating to gambling activities had not been preempted and were applicable to vessels operating in Alaska territorial waters. Because the Alaska legislature determined that it could not create an exception for cruise ship gambling without opening the door to native Indian tribe gambling, a federal preemption was inserted in the 1996 Coast Guard legislation creating § 1175(c) and expressly preempting Alaska anti-gambling laws except when the cruise ships are in an Alaska port or within three miles of a port of call. This federal preemption only applied to "traditional" cruise vessels, not the day cruise vessels, such as that operated by Petitioner. *Cruise Law Overrides Gaming Ban*, Anchorage Daily News, October 27, 1996, at C1; *House Approves Gambling Aboard Cruise Ships*, Anchorage Daily News, May 5, 1995, at B1.

the legislative history that Congress "was legislating to remedy an inefficient patchwork of varied state laws." [10] *Id.* Instead, Congress' clear purpose was to end disparate treatment under federal law between U.S.-flag traditional cruise vessels and foreign-flag ships with regard to shipboard gambling on the high seas.

Petitioner argues that the Fourth Circuit failed to consider a drafting change in 1175(b)(2)(A)that occurred in the House of Representatives after the bill was reported from the subcommittee. The original draft of the bill contained language

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[10] This is underscored by the fact that Congress in 1996 addressed varied state concerns in Alaska [fn. 9, *infra*], Indiana, and California arising after the 1992 Johnson Act amendments went into effect. Section 1175(b)(1)(C) was added after Indiana legalized shipboard gambling in 1993 but discovered that the Johnson Act still precluded maritime gambling on Lake Michigan because the "special maritime jurisdiction" covered under § 1175(a) embraces the Great Lakes, including any state territorial waters. 18 U.S.C. § 7(2); *Clinton Weighs Casinos' Anchors*, Post-Tribune (Gary, In.), October 23, 1996, at B3. California enacted a law in 1992 to reinforce long-standing statutory prohibitions against gambling ships operating in California waters, thereby triggering the Johnson Act provision making shipboard gambling outside the state's territory a federal crime as well. Cal. Code § 11319. But this 1992 state law was perceived as unintentionally prohibiting traditional cruise ships which conducted on-board gambling on the high seas from making multiple ports of call within the state. Senator Boxer added § 1175(b)(2)(C) in 1996 to allow a traditional cruise ship on interstate or international voyages to conduct gambling on the high seas and still make multiple ports of call in one state without violating the Johnson Act. Resp. App. 14-17 (142 Cong. Rec S11794-02, *S11802) (1996) (statement of Sen. Boxer). Hawaii was specifically exempted in this 1996 "Boxer" amendment because it had a preexisting state law that precluded traditional cruise ships from using any gambling equipment while sailing between the islands that make up that state.

in that subparagraph that stated that the traditional cruise ship exception [§ 1175(b)] to the general § 1175(a) prohibition precluding the repair, transportation, possession and use of gambling devices in the special maritime jurisdiction applied "to the repair, *transportation*, *possession*, or use of a gambling device on a vessel that is on a[n] (intrastate) voyage or segment of a voyage ... *only* if the State ... in which the voyage or segment begins and ends has *not* enacted a statute that prohibits that repair, transportation, possession, or use. Resp. App. 1-3 (137 Cong. Rec. H11021-04) (emphasis added). The final version of § 1175(b)(2)(A) deleted the italicized words from the draft. Petitioner attaches great significance to this change on the theory that it reversed the provision from an "opt-in" requirement to an "opt-out" and "changed the burden" for state restrictions, requiring a state to specifically enact a law that prohibits voyages to nowhere, thereby preempting existing state law by implication[11].

But these drafting provisions, and snippets taken from the Committee Report, do not constitute a fulcrum on which this case turns, as Petitioner has argued. These drafting changes were incorporated into § 1175(b) in order make the express provision of the law consistent with the Congressional purpose of allowing each state to extend the reach of its police power beyond state territorial waters.

Congress recognized that states already regulated the possession and transportation of gambling devices within the state's territory. The law, as finally adopted, deleted from § 1175(b)(2)(A) the words "transportation" and "possession." If anything, this deletion acknowledged the states' dominant interest

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[11] None of these points was argued by Petitioner to the Fourth Circuit which is why the circuit court did not specifically address them.

in regulating gambling within its territory and insured that federal law would defer to states' choices in this area. Congress ultimately required that a state, in order to also make voyages to nowhere a *federal* crime, have in place a law prohibiting "that repair or use" of a gambling device with regard to intrastate voyages. By the express terms of § 1175(b), the "repair or use" of a gambling device can only occur outside a state's territorial waters, making it crystal clear that Congress had no intent to preempt existing states laws criminalizing the transport and possession of gambling devices generally, which would include any gambling devices located on vessels, in the state's territory.

Nor does the legislative history read in its entirety support Petitioner's reasoning. Congress in 1992 expressed no intent to promote the gambling boats operated by Petitioner. In a floor statement made contemporaneously with the adoption of the Committee Report, Representative Jones made it clear that "[v]oyages to nowhere could occur only if the gambling activities have not been prohibited under the laws of the State from which the vessel is operating." He further noted that the bill "does not legalize the operation of a vessel if its principal use is as a gambling establishment", underscoring this by further stating the bill "would not legalize the voyage of a vessel which is nothing more than a floating crap game." Resp. App. 3-4 (137 Cong. Rec. H11021-04) (1991) (statement of Rep Jones). Representative Lent concurred in these statements noting that "[t]he committee was aware that a number of coastal States have elected not to allow gambling on vessels in their waters and this legislation retains the right of States to continue to prohibit gambling." Resp. App. 5-6 (137 Cong. Rec. H11021-04, *11022) (1991) (statement of Rep. Lent).

These floor statements were made on November 23, 1991, just as the drafting changes to which Petitioner points, were inserted in § 1175(b). As noted by the Fourth Circuit, these same statements by Representative Lent were again repeated almost

verbatim on January 28, 1992 when the final version of the 1992 Johnson Act amendments were being debated on the floor of the House of Representatives. *Casino Ventures*, 183 F.3d 307, 313. It is difficult to imagine that Congress did an "about face" as claimed by Petitioner and cut the legs from under the very state gambling enforcement efforts which Congress had been reinforcing for a full four decades previously, and yet made no mention of it. Exactly the opposite was true. Legislative history, in conjunction with the express provisions of the law, makes "it clear that federal law was not ousting the authority of states to prohibit and regulate gambling." *Id.*

Petitioner finally argues that the Committee Report dated November 22, 1991 contains a specific reference to an existing Hawaii statute prohibiting gambling on intrastate voyages, which Petitioner maintains is a "powerful indicator" of Congressional intent to preempt all states' anti-gambling laws that might apply to gambling ships. Nothing could be further from the case.

Hawaii did have a statute enacted prior to 1992 which made "promoting gambling aboard ships" illegal. Haw. Rev. Stat. § 712-1222.5. That law makes unlawful the intrastate operation of any craft which permits gambling "whether within or without the waters of the State." Hawaii, like South Carolina, also had a separate statute which made the possession of gambling devices anywhere within the state illegal. Haw. Rev. Stat. § 712-1226.

Petitioner argues that Hawaii, among all the states, was the only state that had a proper "opt-out" provision and therefore is the only state whose preexisting anti-gambling law that generally criminalized the transport and possession of gambling devices, including those located on vessels, survived after the 1992 Johnson Act amendments. But Senator Inouye, when discussing the proposed amendments on the floor of the Senate,

certainly did not characterize it that way. Instead, Senator Inouye stated:

> [s]pecifically, it is my understanding based on the House report to accompany H.R. 3282, that gambling on voyages between two points in a state would be prohibited if the State in which they are operating has a law prohibiting gambling activities on these voyages.

Resp. App. 9 (137 Cong. Rec. S18758-01, *S18759) (1991) (statement of Sen. Inouye).

Senator Inouye then followed this statement with the sentence: "For example, the State of Hawaii has enacted a law - chapter 72 of the Hawaii Revised Statutes - prohibiting gambling activities on a vessel that embarks from any point within the State, and disembarks at the same or another point within the State, except on travel from the continental United States or a foreign country." *Id.* The use of the phrase "for example" hardly leads one to believe that Senator Inouye or any other member of Congress thought that Hawaii was unique or that every other states' general law precluding possession of gambling devices, including Hawaii's, would be preempted.

It is incredible to contend that Congress would make such a far reaching and sweeping change in federal objectives without clearly expressing it in their debates. It is equally implausible that Congress would attach such significance to the Hawaii law and not expressly provide for its exception in the 1992 amendments. But Hawaii is not even referenced in the 1992 amendments. That state is only expressly exempted in the 1996 "Boxer" amendments when Congress subsequently withdrew from states the authority to make it a federal crime to use gambling devices on international or interstate voyages where the vessel makes multiple ports of call in the same state. Fn. 10, *infra*.

The specific exception for Hawaii in 1996 has nothing to do with a state's authority to regulate and proscribe gambling activities in its own territory with respect to "cruises to nowhere." As detailed in the legislative history surrounding the passage of the 1992 amendments, preexisting anti-gambling laws in Hawaii, as well as every other state, including South Carolina, were protected by Congress.

South Carolina, like many coastal states, has not enacted specific legislation referencing the Johnson Act in response to the 1992 amendments. But Congress never intended to punish any state which did not enact a specific law relating to the Johnson Act by preempting that state's preexisting gambling laws. Such a result would turn the Johnson Act on its head and render the gambling laws of all coastal states meaningless.[12] It would create

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[12] Petitioner argues that South Carolina's general prohibitions on the possession of gambling equipment, as well as those of other coastal states, if applicable to casino boats, would "stand as an obstacle" to the 1992 amendments to the Johnson Act because "the authorization to possess gambling devices at the point of embarkation and disembarkation would be dead on arrival due to the existence of general anti-gambling statutes in every coastal state." Pet. for Writ of Cert. 14. But, as already discussed, there was absolutely no intent on the part of Congress to legalize casino boats through the 1992 amendments or encourage their proliferation. Instead, the amendments sought only to put an end to the perceived discriminatory treatment *under federal law* of United States flag vessels on interstate and international voyages. Traditional cruise vessels on international or interstate voyages have entered the ports of coastal states long before the passage of the 1992 amendments. But Congress never expressed any view in 1992 that the enforcement of the coastal states' anti-gambling statutes with regard to "traditional" cruise ships was a problem which needed addressing. *See Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 124, 43 S.Ct. 504, 507, 67 L.Ed.894 (1923) (United States law prohibiting the possession and transportation of intoxicating liquors applies to both domestic and foreign merchant ships when

a single arbitrary exception to the broad Congressional scheme of leaving to each state the fundamental decision regarding gambling enforcement policy.

As the Fourth Circuit properly concluded, federal law clearly leaves to South Carolina the right to enforce its laws against gambling on intrastate "cruises to nowhere" without federal interference.

> States have long regulated in this area. And state primacy here has only been reinforced by congressional enactments, including the one before us, which grant states significant control over the substance of federal criminal laws dealing with gambling. Far from expressing the required "clear and manifest" purpose to displace state authority, Congress has voiced a desire to retain and defer to state choices in this area. Implying preemption here would defeat, not advance, these federal objectives.

Casino Ventures, 183 F.3d at 313.

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within the territorial waters of the United States). *See also Mali v. Keeper of the Common Jail*, 120 U.S. 1, 12, 7 S.Ct. 385, 387, 30 L.Ed. 565 (1887) (State of New Jersey is not deprived of jurisdiction to prosecute a homicide in accordance with state law solely because the murder was committed aboard a foreign flag vessel while docked in a New Jersey port). If and when the enforcement of a state's prohibitions against gambling becomes a problem for the traditional cruise ship industry, Congress has demonstrated that it knows how to expressly preempt state law, as it did in the case of Alaska in 1996.

II.

THIS CASE DOES NOT PRESENT ANY COMPELLING REASON TO GRANT A PETITION FOR WRIT OF CERTIORARI.

There are no reasons favoring review of the decision of the Fourth Circuit Court of Appeals in this case, and the Petition for Writ of Certiorari points to none. There is no conflict of opinion and authority between the Circuit Courts of Appeal concerning the issues raised in this case, nor has a state court of last resort decided the federal question presented here in a way that conflicts with the decision of another state court of last resort or of a Circuit Court of Appeals. Sup. Ct. R. 10.

No other Federal Circuit Court has yet addressed the impact of the 1992 Johnson Act amendments. Where this issue has been addressed by either the federal district courts or state appellate courts, there has been unanimity of opinion. The United State District Court for the District of Massachusetts, referring to the decision by the Fourth Circuit in *Casino Ventures* as "well reasoned", found that state and local regulation of land and piers ancillary to the operation of gambling cruises were not preempted expressly or by implication under 15 U.S.C. § 1175(b)(2)(A). *Leisure Time Cruise Corp. v. Town of Barnstable*, 62 F.Supp.2d 202, 207 (D.Mass. 1999). Likewise, in an unreported opinion, a United States District Court in Florida rejected the contention that the 1992 amendments to the Johnson Act completely preempted pre-Act state laws regulating the possession and use of gambling devices. *Butterworth v. Chance Casino Cruises*, No. 97-846-CIV-J-20, 1997 WL 1068628, at 4 (M.D.Fla. July 14, 1997). Finally, an intermediate New York state appellate court has held that "nothing in the amendments to the Johnson Act (15 U.S.C. § 1175) ... support plaintiff's contention that they were intended by Congress to preempt local regulation of so-called gambling

"cruises to nowhere". *Padavan v. City of New York*, 685 N.Y.S.2d 35 (N.Y.App.Div. 1999).

Although this case may present an important federal question, at least from the perspective of the State, the federal law can hardly be regarded as "unsettled" at this juncture.[13] Certainly it would be consistent for this Court in the exercise of its discretion to wait for the issue presented by this case to be "further illumined by the lower courts", on the principal that "[w]ise adjudication has its own time for ripening." *Singleton v. Comm'r of Internal Revenue*, 439 U.S. 940, 943, 99 S.Ct. 335, 337, 58 L.Ed.2d 335 (1978) (Stevens, J.), *citing Maryland v. Baltimore Radio Show*, 338 U.S. 912, 917-919, 70 S.Ct. 252, 255, 94 L.Ed. 562 (1950).

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[13] The only place in which the preemption question is "unsettled" is in South Carolina itself, primarily because of the litigious nature of the casino boat operators. *Cf. Leisure Time Cruise Corp.*, 62 F.Supp.2d 202, 206 (D.Mass. 1999) ("While still at its berth, the Leisure Lady vows to fight state regulation 'to the death.'"). Immediately after the Fourth Circuit issued its opinion in Casino Ventures, a second gambling boat operator brought a suit in state court seeking injunctive and declaratory relief asserting that South Carolina's anti-gambling laws did not apply to vessels operating in South Carolina waters, or alternatively, that South Carolina's laws were preempted by the Johnson Act. *Stardancer Casino, Inc. v. Stewart*, 99-CP-10-2671 (Charleston Cty., Oct. 8, 1999). In a decision described by one commentator as "bizzare", the trial judge issued an order determining that South Carolina's long standing criminal statutes prohibiting the possession and use of gaming tables and slot machines were preempted by the 1992 amendments to the Johnson Act, basically reversing the Fourth Circuit and reinstating the federal district court decision. *Casino Cruises Test S.C.'s Political System*, The State, Nov. 4, 1999. That case is now on appeal to the South Carolina Supreme Court.

CONCLUSION

In the final analysis, Petitioner is asserting that the Fourth Circuit misapplied the rule of law regarding federal preemption. However, the Fourth Circuit properly stated the preemption doctrines applicable in this case and correctly applied these principals in reaching the conclusion that Congress has not preempted state gambling prohibitions within state territorial waters. As stated in the Rules of this Court, "a petition is rarely granted when the asserted error consists of ... the misapplication of a properly stated rule of law." Sup. Ct. R. 10. It is respectfully submitted that the Petition for Writ of Certiorari in this case is without merit and should be denied.

Respectfully submitted,

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November 23, 1999

APPENDIX

CONGRESSIONAL RECORD

137 Cong. Rec. H11021-04
1991 WL 246048 (Cong.Rec.)
Congressional Record - House of Representatives
Proceedings and Debates of the 102nd Congress, First Session
Saturday, November 23, 1991

UNITED STATES-FLAG CRUISE SHIP COMPETITIVE ACT OF 1991

Mr. JONES of North Carolina.

Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3282) to provide the equity of revenue availability on American and foreign cruise vessels, the regulation of gaming on vessels, penalties for gambling violations and for other purposes, as amended.

The Clerk read as follows:

H.R. 3282

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States-Flag Cruise Ship Competitiveness Act of 1991".

SEC. 2. CLARIFICATION OF, AND LIMITATION ON, GAMBLING DEVICES RESTRICTION.

Section 5 of the Act of January 2, 1951 (15 U.S.C. 1175), commonly referred to as the Johnson Act, is amended-

(1) by inserting before "It shall be unlawful" the following:

"(a) GENERAL RULE.-

(2) by inserting before the period at the end the following: ", including on a vessel documented under chapter 121 of title 46, United States Code, or documented under the laws of a foreign country"; and

(3) by adding at the end of the following:

"(b) EXCEPTION.-

"(1) IN GENERAL.-Except as provided in paragraph (2), this section does not prohibit the repair, transportation, possession, or use of a gambling device on a vessel that is on a voyage or a segment of a voyage on waters that are-

"(A) not in the jurisdiction of any State, possession of the United States or foreign country; or

"(B) otherwise in the admiralty and maritime jurisdiction of the United States and not in the jurisdiction of any State or possession of the United States.

"(2) APPLICATION TO CERTAIN VOYAGES AND SEGMENTS.-

"(A) GENERAL RULE.-Paragraph (1) applies to the repair, transportation, possession, or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) only if the State or possession of the United States in which the voyage or segment begins and ends has not enacted a statute that prohibits that repair, transportation, possession, or use.

"(B) VOYAGES AND SEGMENTS DESCRIBED.-A voyage or segment of a voyage referred to in subparagraph (A) in a voyage or segment, respectively-

"(i) that begins and ends in the same State or possession of the United States, and

"(ii) during which the vessel does not make an intervening stop in another State or possession of the United States or a foreign country.".

The SPEAKER pro tempore (Mr. MCDERMOTT).

Pursuant to the rule, the gentleman from North Carolina <Mr. JONES> will be recognized for 20 minutes, and the gentleman from New York <Mr. LENT> will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina <Mr. JONES>.

Mr. JONES of North Carolina.

Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, H.R. 3282, as amended, is the United States-Flag Cruise Ship Competitiveness Act of 1991. It was introduced by the gentleman from Mississippi, Mr. TAYLOR, and has been cosponsored by over 125 Members of the House.

This bill will eliminate an unfair situation in current law. At present, foreign-flag cruise ships can legally offer gambling, but U.S.-flag passenger ships are prohibited from doing so by law.

As reported by the Committee on Merchant Marine and Fisheries, this bill would legalize the repair, use, possession, and transportation of gambling devices on U.S. and foreign-flag vessels so long as the gambling occurs beyond the jurisdiction of a State. Voyages to nowhere could occur only if the gambling activities have not been prohibited under the laws of the State from which the vessel is operating.

However, the bill does not legalize the operation of a vessel if its principal use is as a gambling establishment.

Therefore, under H.R. 3282, as amended, a dinner cruise could have gambling on board since the principal purpose of the vessel is not the operation of a gambling establishment. But it would not legalize the voyage of a vessel which is nothing more than a floating crap game.

We have a letter from the Justice Department saying that it has no objection to this type of legislation.

This bill treats all vessels, both United States and foreign flag, the same. It will help the U.S.-flag cruise industry, and it will cost the Government nothing.

Mr. Speaker, I reserve the balance of my time.

Mr. LENT.

Mr. Speaker, I yield myself such time as I may consume.

*11022 Mr. Speaker, I rise in support of H.R. 3282 the U.S.-flag Cruise Ship Competitiveness Act. This legislation will permit U.S.-flag cruise vessels to offer gambling to their passengers when embarked on cruises on the high seas. Currently, foreign-flag cruise ships departing from U.S. ports are entitled to offer gambling and virtually all of them do. However, if a U.S.- flag ship departs from the same port as one of these foreign ships, it is against the law for that U.S. ship to offer gambling. This is an archaic prohibition that has limited the opportunities for growth by American interests in the profitable cruise ship trade.

H.R. 3282 changes the law so that both American and foreign-flag cruise ships will operate under the same rules regarding gambling devices on board.

By allowing U.S.-flag vessels to have gambling devices on board we will provide a major incentive to the acquisition of new vessels to the U.S.-flag fleet. The revenues received from legal gambling operations will make U.S. cruise ships more financially viable. We should see American interests proceed to design and construct new cruise ships in American shipyards to begin competing with the foreign-flag operations.

In addition to providing increased ship construction opportunities for American shipyards, new U.S.-flag cruise ships will mean additional sealift capacity for carrying military troops and it will create jobs for American seafarers who are sorely needed as a result of the recent decline in our merchant marine. All of these benefits will accrue without any cost to the Federal Government as a result of the enactment of H.R. 3282.

Mr. Speaker, the Merchant Marine and Fisheries Committee has held several hearings on this matter and very carefully crafted this legislation as an amendment to the so-called Gambling Devices Act. It will allow the possession and operation of gambling equipment on U.S.-flag vessels to the same extent that gambling is currently allowed on foreign-flag vessels as one of the forms of entertainment for the passengers. This bill does not affect in any way the current prohibitions in the Gambling Ship Act, which make it illegal to operate a vessel that is principally engaged in gambling as a floating casino.

I would also like to point out to my colleagues that we have preserved in this bill the right of a coastal State to enact legislation that would prohibit gambling on a vessel that operates from a port of that State even if the vessel sails from that port out

into international waters and then returns to the same port. The committee was aware that a number of coastal States have elected not to allow gambling on vessels in their waters and this legislation retains the right of States to continue to prohibit gambling.

Mr. Speaker, the prohibitions contained in the Gambling Devices Act have represented an economic barrier to the growth of the U.S.-flag cruise ship industry. The legislation we are considering today will remove that economic barrier and provide an incentive for American businesses to build ships and begin operating in this extremely lucrative cruise ship trade.

The Department of Justice supports this bill.

I urge my colleagues to join me in supporting this important piece of legislation.

Mr. JONES of North Carolina.

Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi <Mr. TAYLOR>.

Mr. TAYLOR of Mississippi.

Mr. Speaker, the United States-Flag Cruise Ship Competitiveness Act of 1991 would allow citizens of our country to participate in the fastest growing industry in our country; that is, the lucative cruise ship market. This year about $8 billion to $10 billion will be spent on cruise ships worldwide. Eighty percent of all people who get on a cruise ship any place in the world will be Americans.

Unfortunately, about 98 percent of that money will be spent on foreign-flag vessels because a foreign-flag vessel,

foreign-owned, foreign-crewed, built in a foreign shipyard, can operate out of our shores and do something that an American-flag vessel cannot. That is, offer gaming on board as another attraction on that cruise ship. This seeks to address that inequity.

The Johnson Act was passed in about 1950, and prohibited Americans from having gaming devices on board. Unfortunately, it did not prohibit our foreign- flag competitors. Mr. Speaker, this is an effort to even the playing field, give our vessels a chance to compete.

I must confess I am disappointed that my initial efforts to change the cabotage laws, which are some of the oldest laws in the Republic, that reserve all coastwise commerce solely for American-flag vessels, is not included in this measure. But this at least lets Americans compete at a time when we are going from what was to have been a 600-ship Navy down to what is probably going to be a 400-ship Navy. This will give our American shipyards an opportunity to build cruise ships, our American merchant marine seamen an opportunity to make a living and above all allow American tourists the opportunity to sail on American-flag vessels, which are Coast Guard-inspected, which is the highest level of safety inspection in the world. So, Mr. Speaker, I want to thank the almost 140 Members of this House who have cosponsored the measure. I thank the Justice Department for their cooperation, and the gentleman from North Carolina <Mr. JONES> and the gentleman from New York <Mr. LENT>, for handling the bill today.

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CONGRESSIONAL RECORD

137 Cong. Rec. S18758-01
1991 WL 252582 (Cong.Rec.)
Congressional Record - Senate
Proceedings and Debates of the 102nd Congress, First Session
Wednesday, November 27, 1991

FLOWER GARDEN BANKS
NATIONAL MARINE SANCTUARY

Mr. FORD.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3866, a bill to provide for the designation of the Flower Garden Banks National Marine Sanctuary just received from the House.

The PRESIDING OFFICER.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3866) to provide for the designation of the Flower Garden Banks National Marine Sanctuary.

The PRESIDING OFFICER.

Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. INOUYE.

Mr. President, this measure would make fundamental changes in a longstanding law which deals with a very serious subject-gambling aboard U.S. passenger cruise vessels. Because it does. I would have preferred that the Senate Merchant Marine Subcommittee give H.R. 3282 the same extensive study and analysis which the House committee gave it.

Nevertheless, in a spirit of cooperation in the closing days of this session I will put aside my misgivings based on my understanding that the text of H.R. 3282 as included in the amendment to H.R. 3866 prohibits gambling aboard U.S.-flag and foreign-flag passenger cruise vessels during segments of their voyages among the Hawaiian Islands, even when those segments are on the high seas; and that gambling aboard vessels on voyages among the islands of Hawaii, such as currently undertaken by the SS Independence and the SS Constitution, continue to be prohibited.

*S18759 Specifically, it is my understanding based on the House report to accompany H.R. 3282, that gambling on voyages between two points in a State would be prohibited if the State in which they are operating has a law prohibiting gambling activities on these voyages.

For example, the State of Hawaii has enacted a law-chapter 72 of the Hawaii Revised Statutes-prohibiting gambling activities on a vessel that embarks from any point within the State, and disembarks at the same or another point within the State, except on travel from the continental United States or a foreign country. Therefore, under H.R. 3282 gambling would be prohibited on any U.S. or foreign-flag vessel that is on a voyage, or a segment of a voyage, that sails from a place in Hawaii to another place in Hawaii.

The types of segments of a voyage covered under these restrictions are those legs of a larger voyage during which the vessel leaves one point in a State and arrives either at the same point or another point in the same State, without an intervening stop in another State or a foreign country. This segment may include periods of time during which the vessel is operating in international waters.

Therefore, a vessel leaving either California or Mexico, for example, could have gambling activities on board until the vessel reaches Hawaiian waters. Then, the gambling facilities must be closed. The vessel would not be allowed to have gambling operations during the segments of the voyage during which it is sailing to other islands in Hawaii, even though segments of the interisland voyage are on the high seas.

May I ask the junior Senator from Louisiana if my understanding is correct?

Mr. BREAUX.

The Senator from Hawaii is absolutely correct.

Mr. INOUYE.

I thank the Senator from Louisiana, and with that understanding I shall not object to consideration of the provisions of H.R. 3282.

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CONGRESSIONAL RECORD

1996 U.S. Code Cong. and Adm. News (Vol. 6),
pp. 4239, 4237, 4321

COAST GUARD AUTHORIZATION ACT OF 1996

P.L. 104-324, see page 110 Stat. 3901

DATES OF CONSIDERATION AND PASSAGE

Senate: November 17, 1995; September 28, 1996

House: May 9, 1995; February 29, September 27, 1996

Cong. Record Vol. 141 (1995)

Cong. Record Vol. 142 (1996)

Senate Report (Commerce, Science, and Transportation Committee) No. 104-160, Oct. 19, 1995
[To accompany H.R. 1004]

House Report (Transportation and Infrastructure Committee)
No. 104-106, May 1, 1996
[To accompany H.R. 1361]

House Conference Report No. 104-854, Sept. 27, 1996
[To accompany S. 1004]

RELATED REPORT

House Report (Transportation and Infrastructure Committee)

No. 104-692, July 18, 1996
[To accompany H.R. 2940]

The Senate bill was passed in lieu of the House bill. The Senate Report (this page) is set out below. The House Conference Report (page 4292) and the President's Signing Statement (page 4341) follow.

SENATE REPORT NO. 104-160

* * *

Section 1106.-California cruise industry revitalization

This section resolves a conflict between certain Federal and state laws involving authorized gambling aboard U.S.-flag cruise vessels. Section 1106 amends section 5(b)(2) of the Act of January 2, 1951 (15 U.S.C. 1175(b)(2)), commonly referred to as the "Johnson Act", to prohibit a state from regulating gambling in international waters during the intrastate segment of a voyage that begins or ends in the same state or U.S. possession and is part of a voyage to another state or country. States may still regulate gambling in state waters, on "voyages to nowhere," and on other state voyages. This section does not apply to a voyage within the boundaries of the State of Hawaii.

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HOUSE CONFERENCE REPORT NO. 104-854

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Section 1106. AMENDMENTS TO THE JOHNSON ACT

Section 1106 of the Senate bill resolves a conflict between certain Federal and state laws involving authorized gambling aboard cruise vessels. Section 1106 amends section 5(b)(2) of the Act of January 2, 1951 (15 U.S.C. 1175(B)(2)), commonly referred to as the "Johnson Act", to prohibit a state from regulating gambling in international waters during the intrastate segment of a voyage that begins or ends in the same state or U.S. possession and is part of a voyage to another state or country. States may still regulate gambling in state waters, on "voyages to nowhere," and on other state voyages. The section does not apply to a voyage within the boundaries of the State of Hawaii.

Section 408 of the House amendment is identical to the Senate section 1106. In addition, section 425 of the House amendment amends the Johnson Act to allow the State of Indiana to permit gambling aboard vessels that begin voyages within the territorial waters of Indiana and that do not leave the territorial jurisdiction of that state.

The Conference substitute adopts the House provision, with an amendment that allows gambling on vessels which provide sleeping accommodations for all of its passengers if the vessel is on a voyage (or the segment of a voyage) that is of at least 60 hours and that includes a stop in Canada or in a State other than the State of Alaska and also includes stops in at least 2 different ports in Alaska. The amendment only applies to traditional cruises, not so called "cruises to nowhere".

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CONGRESSIONAL RECORD

142 Cong. Rec. S11794-02
1996 WL 553733 (Cong.Rec.)
Congressional Record - Senate
Proceedings and Debates of the 104th Congress, Second Session
Saturday, September 28, 1996

*S11794 COAST GUARD AUTHORIZATION ACT OF 1996-CONFERENCE REPORT

* * *

CRUISE SHIP REVITALIZATION ACT

Mrs. BOXER.

Mr. President, today we close a 3-year effort to fix a problem in State law that has led to scores of cruise ships bypassing my State of California, taking thousands of jobs and millions of dollars in needed revenue with them. Our ship, finally, has come in, and I thank my colleagues here who have helped bring the cruise ships back to the Golden State.

The conference report the Coast Guard Authorization Act includes my legislation, the California Cruise Industry Revitalization Act, S. 138, that responds to pleas from ports in my State-and the California Legislature-to overturn a State law that has harmed the cruise ship industry and the hundreds of jobs it creates. The California Cruise Industry Revitalization Act has strong bipartisan support and no opposition. It affects only my State. I am thrilled to announce that because of our high-profile efforts to win this provision in the past week-either as part of the Coast Guard bill or the FAA bill-two major cruise lines have announced that they will return to the Port of San Diego by the

end of the year, if this legislation passes. The two lines, Royal Caribbean and Carnival Cruise, pulled out in 1992.

The section of the conference report incorporating my bill corrects a problem that occurred when California responded to a 1992 congressional amendment to the Johnson Act, permitting states to prohibit gambling on intrastate cruises. The California law was written to prevent a proliferation of casino development on Indian land within the State as well as to reinforce the longstanding statutory prohibitions against gambling ships and cruises to nowhere. Unfortunately, it also prohibited ships on international cruises from making multiple ports of call within the State.

My legislation simply makes a technical change to the Johnson Act, allowing a cruise ship to make multiple ports of call in one State and still be considered on an interstate or international voyage.

This legislation is essential to restoring California's cruise ship industry, which has lost 2,400 direct and indirect jobs and $325 million in tourist revenue since 1993. Many cruise ship companies have bypassed second and third ports of call within California.

The State's share of the global cruise ship business has dropped from 10 to 7 percent at the same time that growth in the cruise ship business overall has climbed 10 percent a year. Our lost market share has gone not to other States but to foreign countries along the Pacific coast.

Mr. President, this legislation is not simply a matter of getting Washington out of the way, as some have said. The *S11803 1994 California Assembly Joint Resolution No. 40 specifically states, "That California memorializes Congress to

amend the Johnson Act to remove California's authority to regulate gambling on cruise ships traveling to foreign ports or on segments of voyages going to another State or country,* * *"

Furthermore, the California Trade and Commerce Agency wrote the Senate Commerce Committee urging support for this legislation.

Today, we fulfill that request. We have been able to do so because of the hard work of many people in and outside of this Congress. I first want to thank former Congresswoman Lynn Schenk of San Diego, who first brought this bill to my attention. Lynn persuaded her House colleagues to pass this provision which was included in several maritime bills which passed the House in 1994 only to die in the legislative gridlock that fall.

Unfortunately, Lynn did not return to renew the fight in the 104th Congress. However, the Port of San Diego and other ports in California took up the call and repeatedly wrote and called congressional leaders urging support for this measure. Congratulations Lynn. I was honored to work with you.

Last year, the Committee on Commerce, Science, and Transportation agreed to attach my bill to the Coast Guard Act. I want to thank Senator HOLLINGS, the committee's ranking member, and his staff, for their unwavering support for my provision as the Coast Guard bill in conference entered troubled waters with unrelated, controversial matters inserted in the House version.

I also want to thank Senator FORD, ranking member of the Aviation Subcommittee, for his stalwart support not only in attaching my bill to the FAA Reauthorization Act but to making sure it stayed there in conference with the House until we were assured of the Coast Guard bill's passage.

We could not have won this victory without the help of the distinguished Democratic leadership of the committee, Senator HOLLINGS and Senator FORD. California owes a debt of gratitude to their leadership.

My thanks also to Congress Members JANE HARMAN, BRIAN BILBRAY and BOB FILNER who worked hard to get this bill through the House.

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